UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

STAR MARIANAS AIR, INC., Complainant, v. COMMONWEALTH PORTS AUTHORITY, Respondent.	Docket DOT-OST-2021-0138

RESPONDENT'S ANSWER TO COMPLAINT

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The Respondent, the Commonwealth Ports Authority ("CPA"), answers the Complaint of Star Marianas Air, Inc. ("SMA") as follows:

Introduction

SMA is the only airline that has challenged the new fees imposed by the CPA at three airports in the Commonwealth of the Northern Mariana Islands ("CMNI"): Saipan International Airport, Rota International Airport and Tinian International Airport (collectively, the "Airports"). The new fees were calculated using a well-accepted compensatory methodology and took effect on October 1, 2021 after CPA terminated an airline agreement that provided for residual rate-setting. SMA seeks to create the impression that SMA will bear an enormous financial burden as a result of the change in CPA's rate methodology. But SMA's complaint is trivial and misconceived. The evidence offered by CPA confirms that under the new compensatory rate structure, SMA will be expected to pay a total of only **$126,807** in fees at all three airports combined during the current fiscal year – and this represents a **fee decrease**, not a fee increase. Because of the continuing adverse impact of the COVID-19 pandemic on airport

finances, SMA would have been obligated to pay much more this year if the residual rate structure had remained in effect.

As CPA shows in its accompanying Statement of Position and Brief, the Department should dismiss SMA's Complaint because (1) SMA's claims do not present a "significant dispute" within the meaning of 49 U.S.C. § 47129(c)(2); (2) SMA has not filed adequate testimony or any statement of position and brief to support its Complaint, as required by 14 C.F.R. Part 302, Subpart F; (3) SMA's Complaint misconceives applicable rate-setting principles and SMA has not even attempted to offer sufficient evidence to meet its burden of proof; (4) CPA has offered compelling evidence, including expert testimony, that the challenged fees are reasonable and fully comply with applicable rules; and (5) the alleged lack of consultation does not warrant any relief.[1]

Response to Specific Allegations in Complaint

CPA responds as follows to the "Executive Summary" and numbered paragraphs in SMA's Complaint:

Executive Summary. CPA admits that, effective October 1, 2021, it terminated the Airline Use Agreement and Lease of Premises ("AUA") between CPA and all the airlines operating at the Airports, including SMA, and imposed new fees.[2] CPA denies the remaining allegations in the Executive Summary.

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[1] In support of its Answer, CPA has submitted an Appendix of Evidence containing the Declaration of Skye Hofschneider ("Hofschneider Decl.") and the Declaration of Bonnie Ossege ("Ossege Decl."), along with 18 supporting documentary exhibits marked Exhibits CPA-1 through CPA-18.

[2] Although the new fees took effect on October 1, 2021, CPA has waived any fee payments (other than PFCs) for the first quarter of Fiscal Year 2022, so all air carriers serving the Airports,

CPA's termination of the AUAs with each of the airlines, including SMA, was permitted by and consistent with the provisions of § 6.01 of the AUA. *See* Hofschneider Decl. ¶ 20 & Exs. CPA-12, CPA-13. The new fees comply with the compensatory rate-setting rules set forth in FAA's "Policy Regarding Rates and Charges," 78 Fed. Reg. 55330 (Sep. 10, 2013) ("Rates and Charges Policy") and are not unreasonable or unjustly discriminatory. *See* Ossege Decl. ¶¶ 4-5(c) & Ex. CPA-17. CPA also denies that its new fees are unreasonable as described by FAA's Airport Compliance Manual, Order 5190.6B, which, in any event, "is not regulatory and is not controlling with regard to airport sponsor conduct." *Id*. at ¶ 1.1, Page 1-1. There is no basis for SMA's allegation that the new fees "discriminate against Star Marianas" or improperly require SMA to pay for aeronautical or nonaeronautical facilities SMA does not use. SMA's assertion that CPA may only charge SMA for use of facilities and services that are "required for Star Marianas' operation" reflects a fundamental misunderstanding of applicable rate-setting principles. Each of CPA's Airports is certificated under Part 139. *See* Ossege Decl. ¶ 14. Even though SMA could lawfully operate at airports that are not certificated under Part 139, it has no legal right to refuse to pay for the actual costs of the Part 139 airports operated by CPA where SMA has chosen to offer its air transportation services. *Id.*

1. CPA admits that SMA's air carrier certificate number is 1SMA230M and it provides air service in Saipan, Tinian, and Rota. Admit that SMA is a tenant and user of terminals located in Tinian and Rota and the commuter terminal in Saipan. Admit that CPA "governs" the terminal to the extent that CPA owns and manages the terminals. CPA lacks knowledge as to whether SMA only flies aircraft that are configured to seat a maximum of nine

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including SMA, will only begin to be charged the new fees as of January 1, 2022. *See* Ossege Decl. ¶ 8.

passengers and have a maximum landing weight of less than 12,500 pounds. Admit to the extent that Part 139 prescribes rules governing the certification of airports serving scheduled passenger-carrying operations of an air carrier operating aircraft configured for more than 9 passenger seats and unscheduled passenger-carrying operations of an air carrier operating aircraft configured for at least 31 passenger seats.

2. CPA admits the allegations in ¶ 2.

3. The allegations of law in ¶ 3 require no response. To the extent they are deemed to be allegations of fact: CPA admits that the Complaint purports to have been submitted pursuant to 49 U.S.C. § 47129 and that a complaining airline must file its complaint within 60 days of receiving written notice of a new fee. CPA otherwise denies the allegation in ¶ 3. The Department must dismiss a complaint, without determining whether the challenged fee is reasonable, if it determines, as it should in this case, that the complaint does not present a "significant dispute." 49 U.S.C. § 47129(c)(2) ("Within 30 days after such complaint is filed with the Secretary, the Secretary shall dismiss the complaint if no significant dispute exists."). SMA's complaint does not present a significant dispute within the meaning of § 47129(c)(2).

4. CPA admits the allegations in ¶ 4.

5. The allegations of law in ¶ 5 require no response.

6. The arguments and allegations of law in ¶ 6 require no response. CPA does not contend that any of the jurisdictional exceptions set forth in 49 U.S.C. § 47129(e) apply in this case. CPA denies the remaining allegations in ¶ 6. CPA lawfully terminated the AUA and lawfully imposed any fees SMA seeks to challenge in this case.

7. The arguments and allegations of law in ¶ 7 require no response. CPA does not contend that the fees SMA seeks to challenge in this case are not "fees" within the meaning of

49 U.S.C. § 47129(a)(1). CPA denies the remaining allegations in ¶ 7. It is impossible to determine from the Complaint exactly which fees SMA is challenging. The Complaint is entitled "Complaint of Star Marianas Air, Inc. in Opposition to New Terminal Charges from the Commonwealth Ports Authority" (emphasis added). CPA presumes that SMA wishes to challenge the new terminal rental rates and facility charges that will take effect on January 1, 2022. But does SMA also challenge the new landing fees? Apparently they do. The Complaint appears to challenge CPA's fuel flowage fee, ¶ 45(b), but there are no allegations that SMA actually pays any fuel flowage fees. In fact, only sellers of fuel pay fuel flowage fees to CPA and SMA fuels its own aircraft so SMA does not pay any fuel flowage fees, either directly or indirectly. *See* Ossege Decl., ¶ 17.

8. The arguments and allegations of law in ¶ 8 require no response. CPA denies that the Complaint presents a "significant dispute" within the meaning of § 47129(c)(2).

9. The arguments and allegations of law in ¶ 9 require no response. CPA admits that the applicable procedural rules for this proceeding are set forth in 14 C.F.R. Part 302, Subpart F. CPA denies that SMA has complied with the requirements of these rules, specifically: the requirement that SMA identify the challenged fee increase or newly-established fee, 14 C.F.R. §§ 302.601(a), 302.602(a); the requirement that the complaint "shall set forth the entire grounds for requesting" relief, 14 C.F.R. § 302.603(a); the requirement that SMA's complaint include a brief and all supporting testimony on which SMA intends to rely, 14 C.F.R. § 302.603(a); and the certification requirement of 14 C.F.R. § 302.603(c)

10. The arguments and allegations of law in ¶ 10 require no response. CPA does not contend that it has not imposed a new "fee" within the meaning of 14 C.F.R. § 302.601(a) or that

the new fees are not subject to review because none of the airlines, including SMA, will be required to pay the new fees until January 1, 2022.

11. The arguments and allegations of law in ¶ 11 require no response. CPA admits that the Complaint contains a section titled "Certification." CPA denies that SMA has complied with the requirements of 14 C.F.R. § 603(c). CPA specifically denies that SMA has complied with the requirements of 14 C.F.R. § 603(c)(1), because SMA did not and cannot certify that it has "served on [CPA] and all other carriers serving the airport the . . . brief . . . and that those parties have received or will receive [the brief] no later than the date the complaint is filed." CPA specifically denies that SMA has complied with the requirements of 14 C.F.R. § 603(c)(3); the Complaint alleges that "information has been omitted because [CPA] has not made that information available to [SMA]," but the certification also fails to "specify the date and form of the carrier's request for information from the airport owner or operator."

12. The arguments and allegations of law in ¶ 12 require no response. The Department should dismiss the Complaint, without making a determination of whether CPA's new fees are reasonable, because the Complaint does not present a "significant dispute" within the meaning of § 47129(c)(2).

13. The arguments and allegations of law in ¶ 13 require no response. CPA admits that SMA has the initial burden of production to show that any challenged fee is unreasonable or discriminatory. SMA has not come close to meeting this burden in its Complaint. CPA admits that if SMA makes this showing, CPA has a burden of production to show that the fee is reasonable and nondiscriminatory. *Port Auth. of N.Y. & N.J. v. Dep't of Transp.*, 479 F. 3d 21, 42–43 & n.17 (D.C. Cir. 2007). CPA has shown that the new rates effective October 1, 2021 are

reasonable and nondiscriminatory. Once both SMA and CPA meet their respective burdens of production, SMA bears the ultimate burden of persuasion. *Id.*

14. The arguments and allegations of law in ¶ 14 require no response. CPA admits that, as provided in 49 U.S.C. of § 47129(b)(2), the Department must rely on the Rates and Charges Policy in determining whether the challenged fees are reasonable.

15. The arguments and allegations of law in ¶ 15 require no response. CPA admits FAA's Rates and Charges Policy was promulgated under 49 U.S.C. of § 47129(b)(2). CPA denies the remaining allegations in ¶ 15. Order 5190.6B was not promulgated under § 47129(b)(2) and by its own terms, Order 5190.6B "is not regulatory and is not controlling with regard to airport sponsor conduct." *Id*. at ¶ 1.1, Page 1-1.

16. The arguments and allegations of law in ¶ 16 require no response. CPA admits that 49 U.S.C. § 47129(a)(2) provides express statutory authority to use the compensatory methodology CPA used to calculate all the new rates that went into effect on October 1, 2022 at the three airports in the CNMI served by SMA.

17. The arguments and allegations of law in ¶ 17 require no response. CPA denies that it can only include "costs that Star Marianas causes to be incurred" in the calculation of the fees SMA must pay to use CPA's Airports. This allegation reflects SMA's misunderstanding of applicable rate-setting rules. Cost causation is a principle used to allocate costs between different cost centers; it is not used to determine the costs that can be recovered from individual aeronautical users, such as SMA. *See* Ossege Decl. ¶¶ 14-15. CPA also denies that the Court of Appeals' decision in *Kent County* or FAA's Order 5190.6B governs the Department's decision or supports SMA's claims in this proceeding. In fact, the Sixth Circuit specifically rejected the position SMA takes here, and instead held that the County *must* require general aviation users to

pay a portion of the costs of maintaining emergency services at a level necessary to comply with 14 C.F.R. Part 139. As the Sixth Circuit explained, "the fact that the [emergency] services are initially provided because of regulations requiring the services for commercial airlines does not validate allocating the costs of such services only to those airlines when the service provided is adequate to cover all aircraft which use the Airport." *Northwest Airlines, Inc. v. Cty. of Kent, Mich.*, 955 F.2d 1054, 1063 (6th Cir. 1992), *aff'd*, 510 U.S. 355 (1994).[3]

18. The arguments and allegations of law in ¶ 18 require no response. The definition of "aeronautical use" has nothing to do with principles of cost allocation. There is no allegation that CPA is charging SMA for any nonaeronautical facilities or services provided at any of the three Airports

19. The arguments and allegations of law in ¶ 19 require no response. The new fees that went into effect on October 1, 2021 (the "2022 Fees") at the three airports in the CNMI served by SMA were all calculated using a "compensatory methodology" within the meaning of 49 U.S.C. § 47129(a)(2). CPA denies that it is has imposed fees that were calculated using a residual or hybrid methodology.

20. The arguments and allegations of law in ¶ 20 require no response. The new fees that took effect at the Airports on October 1, 2021 were not calculated using a residual rate methodology.

[3] In the Supreme Court's *Kent County* decision, the Court noted the Department's special expertise in airport rate-setting and encouraged the Department to promulgate appropriate standards for determining the reasonableness of contested airport fees. *See Northwest Airlines, Inc. v. Cty. of Kent, Mich*., 510 U.S. 355, 368 n.14 (1994). Shortly after the *Kent County* decision was issued, Congress enacted what became 49 U.S.C. § 47129(b)(2) and, two years later, FAA promulgated its initial version of the Rates and Charges Policy: "Policy Regarding Airport Rates and Charges," 61 Fed. Reg. 31994 (June 21, 1996).

21. The arguments and allegations of law in ¶ 21 require no response. The new fees that took effect at the Airports on October 1, 2021 were not calculated using a residual rate methodology.

22. CPA admits that is has imposed rates and denies the remaining allegations in ¶ 22. The new fees that went into effect on October 1, 2021 at the Airports were all calculated using a "compensatory methodology" within the meaning of 49 U.S.C. § 47129(a)(2) and do not employ (or "purport to employ") a residual rate methodology.

23. CPA denies that SMA is at a severe disadvantage in this proceeding and that CPA has not provided any of the information described in Appendix 1 to the Rates and Charges Policy. The development of the rates and charges methodology CPA is now using was prompted by SMA's complaint to the FAA, many years ago, that the form of rate-setting SMA had agreed to in the AUA was an unlawful form of "head tax." *See* Hofschneider Decl. ¶ 4. CPA engaged Ricondo in 2015 to develop a compensatory methodology. *Id*. ¶ 5. In 2016, CPA provided SMA with detailed documentation of Ricondo's rate model and had two meetings with SMA to discuss the new methodology. *Id*. ¶¶ 7-11. As a result of pressure SMA put on CPA's Board of Directors and its lobbying in the Legislature, CPA deferred the implementation of the new rate-setting methodology until FY 2022. *Id*. ¶¶ 14-15; Ossege Decl. ¶ 4. In short, SMA has had ample opportunity for *five years* to explore the rate methodology SMA is challenging in this proceeding.

24. CPA denies the allegations in the first sentence of ¶ 24. CPA admits that SMA commenced a legal action in CNMI Superior Court in December 2020 alleging breach of contract and denies the remaining allegations in the second sentence of ¶ 24. CPA admits that Exhibit B is a true copy of the Superior Court complaint.

25. CPA admits that SMA sent CPA the June 25, 2021 letter and that Exhibit C is a true copy of the letter, but otherwise denies the allegations of ¶ 25.

26. CPA has insufficient knowledge or information to admit or deny the allegations in ¶ 26.

27. CPA denies that Star Marianas first received notification of CPA's termination of the AUA on August 27, 2021. Star Marianas first received notification of the AUA termination on August 25, 2021. *See* Hofschneider Decl. ¶ 19.

28. CPA admits the allegations in ¶ 28.

29. CPA admits the allegations in ¶ 29.

30. CPA admits that it sent a letter to SMA on September 9, 2021 and that Exhibit G is a true copy of its September 9, 2021 letter. CPA denies the alleged characterization of its letter and states that the September 9, 2021 letter speaks for itself.

31. CPA admits that SMA sent a letter to CPA dated September 14, 2021 and that Exhibit H is a true copy of SMA's September 14, 2021 letter. CPA denies the alleged characterization of SMA's request for information in the letter and states that the September 14, 2021 letter speaks for itself.

32. CPA has insufficient knowledge or information to admit or deny the allegations in ¶ 32.

33. CPA admits that it sent a letter to SMA on September 28, 2021 and that Exhibit J is a true copy of its September 28, 2021 letter. CPA denies the alleged characterization of its letter and states that the September 28, 2021 letter speaks for itself.

34. CPA admits that SMA responded to CPA's September 28, 2021 letter and sent CPA a letter dated October 1, 2021 and that Exhibit K is a true copy of SMA's October 1, 2021 letter. CPA admits that it has not responded to SMA's October 1, 2021 letter.

35. CPA has insufficient knowledge or information to admit or deny the allegations in ¶ 35.

36. CPA denies the allegations in ¶ 36.

37. The arguments and allegations of law in ¶ 37 require no response. CPA admits that SMA may file a reply, which "shall be limited to new matters raised in the answers." 14 C.F.R. § 302.605(c). CPA denies that 14 C.F.R. Part 302, Subpart F permits complaining carriers to "supplement" their complaints. CPA denies that SMA has alleged sufficient facts or followed the procedures required by Subpart F to pursue any theory that SMA is entitled to additional disclosures. See above, ¶¶ 9, 11.

38. The arguments and allegations of law in ¶ 38 require no response. CPA denies that when calculating lawful fees using a compensatory methodology, CPA may only charge SMA for the costs of facilities that are required solely for operations conducted by SMA.

39. CPA denies the allegations in ¶ 39. The 2022 Fees are reasonable and were calculated using a "compensatory methodology" within the meaning of 49 U.S.C. § 47129(a)(2) and consistent with FAA's Rates and Charges Policy.

40. The arguments and allegations of law in ¶ 40 require no response. SMA misconceives the applicable legal standards. See above, ¶ 17.

41. The arguments and allegations of law in ¶ 41 require no response; to the extent they are allegations of fact, CPA denies the allegations in in ¶ 41. SMA misconceives the applicable legal standards. See above, ¶ 17.

42. The arguments and allegations of law in ¶ 42 require no response. CPA admits that each of the three airports it operates in Saipan Tinian and Rota are certificated under 14 C.F.R. Part 139 and that the expenses of maintaining the facilities required by Part 139 are reflected in the 2022 Fees.[4] CPA has insufficient knowledge or information to admit or deny any allegations about the size or configuration of SMA's entire fleet of aircraft.

43. The arguments and allegations of law in ¶ 43 require no response. CPA admits that Exhibit M is a true copy of a July 29, 2021, letter from CPA to SMA, but otherwise denies the allegations of ¶ 43. CPA has properly allocated ARFF costs in calculating the 2022 Fees. *See* Ossege Decl. ¶ 14. CPA no longer charges "facility fees" at its Airports, as it did under the AUA.

44. CPA admits that (as a result of Typhoon Yutu) at the time the new fees were announced SMA facilities at the Saipan Commuter Terminal consisted of three 40-foot metal shipping containers; denies that the open-air passenger waiting area is currently without water or toilet facilities; and admits that the open-air passenger waiting area is not air conditioned.

45. CPA denies that it has allocated to SMA terminal space that SMA "does not need or use." The arguments and allegations of law in ¶ 45(a) require no response. CPA admits that SMA's passengers are not subject to security screening requirements under 49 U.S.C. § 1544, but denies that CPA has allocated to SMA any of the costs of passenger screening space SMA's passengers do not use. *See* Ossege Decl. ¶ 16. CPA admits that it does not provide refueling services to SMA, but denies the remaining allegations in ¶ 45(b). Exhibit N is a portion of CPA's Public Notice of Proposed Regulations as published in the Commonwealth Register.

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[4] SMA mistakenly refers to "§ 139," but CPA assumes SMA intended to refer to "Part 139."

CPA recovers certain costs through a "Fuel Flowage Fee" charged to sellers of fuel, but SMA fuels its own aircraft and does not pay any Fuel Flowage Fees (directly or indirectly) to CPA. *See* Ossege Decl. ¶ 17. The 2022 Fees do not include any of the costs CPA recovers through its fuel flowage fee. The fuel costs that are included in the M&O expenses that enter the rate calculations are related to vehicles or generators used by the Authority itself. *Id.*

46. The arguments and allegations of law in ¶ 46 require no response. CPA admits that SMA is the only passenger airline that flies to Rota and Tinian and that Rota and Tinian are both certified as Class 1 airports under Part 139, but denies that SMA is the only airline serving those two airports. CPA denies the remaining allegations in ¶ 46.

47. CPA admits that the terminal buildings in Rota and Tinian were designed to accommodate aircraft of different sizes and configurations, including aircraft of the sizes and configurations operated by SMA, and otherwise denies the allegations of ¶ 47.

48. The speculative and hypothetical arguments and allegations of law in ¶ 48 require no response. SMA has not offered any evidence that the hypothetical situation alleged in ¶ 48 is expected to arise in either Rota or Tinian.

49. CPA denies the allegations in the first sentence in ¶ 49. CPA has provided, and continues to provide, space for SMA to conduct its operations in both Rota and Tinian. SMA has been conducting operations on these islands for at least the past nine years. Hofschneider Decl. ¶ 3. CPA admits that SMA operates some aircraft that are configured to carry no more than nine passengers, but has insufficient knowledge or information to admit or deny any allegations about the size or configuration of SMA's entire fleet of aircraft.

50. The speculative and hypothetical arguments and allegations of law in ¶ 50 require no response. SMA has not offered any evidence that the hypothetical situation alleged in ¶ 50 is expected to arise in either Rota or Tinian.

51. The speculative and hypothetical arguments and allegations of law in ¶ 51 require no response. SMA has not offered any evidence that the hypothetical situation alleged in ¶ 51 is expected to arise in either Rota or Tinian.

52. CPA denies the allegations in ¶ 52.

53. The arguments and allegations of law in ¶ 53 require no response. Order 5190.6B "is not regulatory and is not controlling with regard to airport sponsor conduct." *Id*. at ¶ 1.1, Page 1-1.

54. The arguments and allegations of law in ¶ 54 require no response. Order 5190.6B "is not regulatory and is not controlling with regard to airport sponsor conduct." *Id*. at ¶ 1.1, Page 1-1.

55. CPA denies the allegations in the first sentence of ¶ 55. The arguments and allegations of law in the second sentence of ¶ 55 require no response. CPA denies the allegations in the third sentence of ¶ 55. CPA admits that Exhibit O is a true copy of CPA's 2019 Financial Statement. CPA has not made any such payments to the Office of Public Auditor ("OPA") for at least the past 15 years and does not plan to make such a payment to the OPA in FY 2022 unless the FAA advises that it would be lawful to do so. CPA has recently been communicating with regional officials of the FAA to determine whether it could lawfully make such payments to the OPA. *See* Hofschneider Decl. ¶ 23 & Ex. CPA-15.

56. CPA admits that its July 29, 2020 letter to SMA included a proposed budget for FY 2021, along with budgets for FY 2018, FY 2019 and FY 2020 for comparison, and that these

budgets each included an item for the statutory 1% contribution to the OPA. CPA denies the remaining allegations in ¶ 56. CPA did not make any of these budgeted payments to the OPA. If the FAA advises that such payments to the OPA are not lawful, CPA will reconcile the OPA expenses with the airlines, as appropriate. *See* Hofschneider Decl. ¶ 23.

57. The arguments and allegations of law in ¶ 57 require no response. The budget that Ricondo used to calculate the Fiscal Year 2022 rates contains an allowance for such a payment to the OPA of $126,239 in the event that the FAA advises such a payment is lawful. If the FAA advises such a payment is not lawful, a credit to the airlines will be included in the year-end reconciliation of budgeted to actual expenses. *See* Hofschneider Decl. ¶ 23 & Ex. CPA-15.

58. CPA denies the allegations in the first sentence of ¶ 58. In response to the allegations in the second sentence, CPA states that its August 23, 2021 letter speaks for itself. CPA denies the allegations in the third sentence of ¶ 58.

59. The arguments and allegations of law in ¶ 59 require no response. SMA has had ample opportunity for *five years* to explore the rate methodology SMA is challenging in this proceeding. CPA has offered persuasive evidence from its rate-setting expert that the 2022 Fees are reasonable. *See* Ossege Decl. ¶¶ 4-17.

60. The arguments and allegations of law in ¶ 60 require no response.

61. The arguments and allegations of law in ¶ 61 require no response.

62. The arguments and allegations of law in ¶ 62 require no response. CPA denies the allegations in the first sentence of ¶ 62 that SMA is unable to calculate the amount of money in dispute and that CPA has improperly included in the 2022 Fees any costs "for things it does not use." SMA has been familiar for five years with the rate methodology CPA has used to set

the FY 2022 Fees and CPA provided a breakdown of the capital costs and M&O expenses considered in developing the rates on September 3, 2021. *See* Hofschneider Decl. ¶¶ 7-11, 22. CPA has insufficient knowledge or information to admit or deny the allegations in the third sentence of ¶ 62 concerning the extent to which SMA may pass along any rate increases to its passengers. CPA notes, however, that for FY 2022, the new fees established by CPA will actually result in a rate *decrease* compared to what they would have been if the residual method prescribed in the AUA were used to calculate FY 2022 rates. *See* Ossege Decl. ¶ 11. The Department should find that SMA's Complaint does not present a "significant dispute" within the meaning of § 47129(c)(2) for all the reasons SMA offers in its accompanying Statement of Position and Brief.

63. CPA denies the allegations in ¶ 63. CPA has been discussing the termination of the AUA with SMA and the other air carriers serving the Airports for more than five years. *See* Hofschneider Decl. ¶¶ 7-14. The change in rate methodology will not lead a fee increase in FY 2022 compared to what the fees would have been if they were calculated in accordance with the agreed-upon method in the now-terminated AUA. *See* Ossege Decl. ¶ 11.

64. The arguments and allegations of law in ¶ 64 require no response. CPA denies the allegations in the first sentence of ¶ 64. CPA has been discussing the termination of the AUA with SMA and the other air carriers serving the Airports for more than five years. *See* Hofschneider Decl. ¶¶ 7-14. CPA also denies the allegations in the second sentence of ¶ 64. SMA has not identified any issues about the calculation of or justification for the new fees that would be worthy of review by the Department.

65. The arguments and allegations of law in ¶ 65 require no response. The Department should find that SMA's Complaint does not present a "significant dispute" within

the meaning of § 47129(c)(2) for all the reasons SMA offers in its accompanying Statement of Position and Brief.

66. CPA denies the allegations of ¶ 66.

67. The arguments and allegations of law in ¶ 67 require no response. CPA denies that SMA has offered any evidence that the 2022 Fees were not calculated in accordance with allowable compensatory rate-setting methods.

68. The arguments and allegations of law in ¶ 68 require no response. The Department should find that SMA's Complaint does not present a "significant dispute" within the meaning of § 47129(c)(2) and dismiss the Complaint. If The Department nevertheless finds that there is a significant dispute, it should ultimately conclude that the challenged 2022 Fees are reasonable, for all the reasons SMA offers in its accompanying Statement of Position and Brief.

First Affirmative Defense

SMA has failed to show that there is a "significant dispute" within the meaning of 49 U.S.C. § 47129(c)(2) with respect to the 2022 Fees.

Second Affirmative Defense

The Complaint violates the procedural requirements of 14 C.F.R. § 302.603. It does not comply with § 302.603(a) because it does not set forth the "entire grounds for requesting a determination of the reasonableness of the airport fee," is not supported by testimony, and does not include a statement of position with a brief. It does not comply with § 302.603(c) because the certification falsely claims that SMA served a brief on CPA and fails to "specify the date and form of the carrier's request for information from the airport owner or operator."

Third Affirmative Defense

SMA cannot meet its burden to prove that the 2022 Fees are unreasonable.

Fourth Affirmative Defense

The compensatory rate methodology used by CPA and the 2022 Fees comply with FAA's Rates and Charges Policy and are in every respect "reasonable" within the meaning of 49 U.S.C. § 47129(a)(1)

Fifth Affirmative Defense

SMA's claims are barred by its continuing failure to pay any fees (other than PFCs) to CPA for more than six years.

Sixth Affirmative Defense

SMA has no standing to challenge new rates or rate increases applicable to non-party airlines.

Dated: November 5, 2021

Respectfully submitted,

By: */s/ Joseph M. Hallahan*

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By: */s/ Robert T. Torres*
ROBERT T. TORRES

Certification Pursuant to 14 C.F.R. § 302.4(b)

The undersigned herby certifies that:

1. I, the individual signing the pleading, am an internal counsel of the pleader.

2. Pursuant to Title 18 United States Code Section 1001, I, in my individual capacity and as the authorized representative of the pleader, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the pleading. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

By: */s/ Joseph M. Hallahan*
JOSEPH M. HALLAHAN

Certification Pursuant to 14 C.F.R. § 302.604(e)

Pursuant to 14 C.F.R. § 302.604(e), the undersigned hereby certifies that:

1. The answer, brief and all supporting testimony and exhibits have been served by electronic transmission (email) on the carrier filing the complaint;

2. The party served has received the answer, brief, and all supporting testimony and exhibits, or will receive them no later than the filing date of the answer (as measured in Eastern Standard Time);

3. In accordance with 14 C.F.R. § 302.3(a)(1), these materials have been submitted to the Department "by electronic means using the process set at https://regulations.gov," and no submission on computer diskette has been made; and

4. The data files served on the complaining carrier via email are a true copy of the data files submitted on https://regulations.gov.

By: */s/ Ezra Dunkle-Polier*
Ezra Dunkle-Polier

CERTIFICATE OF SERVICE

In accordance with the requirements of 14 C.F.R. § 302.7(e)(2), I hereby certify that on November 5, 2021, a true and correct copy of this Answer, and the accompanying Appendix of Evidence and Statement of Position with a Brief, was served by email on complainant's counsel of record, and no indication was received that transmission had failed:

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